

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

| | | |
|--------------------------|---|--|
| UNITED STATES OF AMERICA |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 2:10-cv-13101-BAF-RSW |
| and |) | |
| |) | Judge Bernard A. Friedman |
| SIERRA CLUB, |) | |
| |) | Magistrate Judge R. Steven Whalen |
| Plaintiff-Intervenor |) | |
| |) | |
| v. |) | |
| |) | |
| DTE ENERGY COMPANY, and |) | |
| DETROIT EDISON COMPANY |) | |
| |) | |
| Defendants. |) | |
| |) | |

**UNITED STATES' MOTION FOR TIME TO MOVE FOR PARTIAL FINAL
JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 54(b)**

INTRODUCTION

In light of the Court's recent ruling on Defendants' motion for summary judgment, the United States hereby requests that it be permitted to file any motion for certification of partial final judgment under Federal Rule of Civil Procedure 54(b) through at least June 30, 2014.¹ The undersigned counsel has conferred with counsel for Defendants and Plaintiff-Intervenor. Plaintiff-Intervenor Sierra Club does not oppose this relief, and Defendants have advised they will take no position on this motion until after its filing.

The Parties agree that a telephone status conference may be helpful to discuss next steps, including a potential stay of further proceedings during the pendency of any appeal.

¹ As described on page 2, circumstances may arise requiring the government to seek further extensions of this time period.

DISCUSSION

This Court granted Defendants' motion for summary judgment on March 3, 2014. Doc. 196. That decision resolves the United States' claims with respect to the Spring 2010 work at Monroe Unit 2. However, the United States has moved to amend its complaint to add claims concerning six new alleged modifications, and that motion remains pending. Plaintiff-Intervenor Sierra Club also has a pending motion to amend its complaint. Therefore, because the Court has not yet entered final judgment, the avenue for any appeal at this time is through Rule 54(b).

The United States is currently considering whether to appeal. Before we can file any Rule 54(b) motion, the United States must receive authorization from the Office of the Solicitor General for the United States. 28 C.F.R. § 0.20(b). That process requires the involvement, coordination, and recommendations of officials in several divisions and offices of both the Department of Justice and the Environmental Protection Agency.

Rule 54(b) does not include a time frame for when a party must seek certification of a partial final judgment. Nor is counsel aware of Sixth Circuit precedent establishing any timing requirement. In light of the time needed to reach a final governmental decision on appeal, and in the abundance of caution to avoid a finding that any eventual motion is untimely, the United States requests that it be permitted to file any motion under Rule 54(b) through at least June 30, 2014. In the event more time is needed, the United States will advise the Court and seek additional time.

We understand that Plaintiff-Intervenor Sierra Club may be seeking certification of a partial final judgment at this time. We request that in addressing that motion the Court not issue judgment with respect to any of the United States' claims at this time, while we engage in the government's process for deciding whether to seek a judgment for appeal.

CONCLUSION

The United States respectfully requests that it be permitted to file any motion for certification of partial final judgment under Federal Rule of Civil Procedure 54(b) through at least June 30, 2014.

Respectfully Submitted,

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Dated: April 2, 2014

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served via ECF on counsel of record.

s/ Thomas A. Benson
Counsel for the United States